

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

BRANDON GULLATTE	§	
VS.	§	CIVIL ACTION NO. 9:17-CV-18
WARDEN WHEAT, ET AL.	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Brandon Gullatte, a prisoner confined at the Connally Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Kevin R. Wheat, Keely Snyder, Juan Torres, Felton Griffin, Jr., and James Davis.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. Defendants Wheat, Snyder, and Griffin filed a motion to dismiss the claims against them pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). The Magistrate Judge recommends granting the motion, in part, and denying it, in part. The Magistrate Judge recommends dismissing the conspiracy claims and dismissing all claims against defendant Griffin and Snyder. The Magistrate Judge recommends denying the motion with respect to plaintiff's claim that defendant Wheat failed to protect plaintiff from an assault by defendant Torres.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff and defendant Wheat filed objections to the Magistrate Judge's Report and Recommendation. The court has conducted a *de*

novo review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

In his objections, plaintiff reiterates the facts alleged in his complaint. For the reasons stated in the Magistrate Judge's Report and Recommendation, plaintiff's allegations are insufficient to state a claim of conspiracy or a claim that defendants Snyder and Griffin failed to protect him from an assault.

Defendant Wheat argues that plaintiff alleged insufficient facts to demonstrate that defendant Wheat knew that defendant Torres posed a sufficient risk of harm to plaintiff. In his complaint, plaintiff alleged that defendant Torres had a history of assaulting inmates, that defendant Wheat was aware that defendant Torres used excessive force on multiple occasions, and that defendant Wheat failed to take action to prevent future assaults. These allegations are sufficient to state a claim that defendant Wheat was deliberately indifferent to the safety of other inmates, including plaintiff. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). Therefore, plaintiff should be allowed to proceed with this claim.

ORDER

Accordingly, the objections (document nos. 31 and 32) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 29) is **ADOPTED**. The motion to dismiss (document no. 11) is **GRANTED**,

in part, and **DENIED**, in part. A partial judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So Ordered and Signed

Feb 8, 2018

A handwritten signature in black ink, appearing to read "Ron Clark", written over a horizontal line.

Ron Clark, United States District Judge